

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3991 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

N R GAJJAR

Versus

HIGH COURT OF GUJARAT

Appearance:

MR IS SUPEHIA for Petitioner
M/S PATEL ADVOCATES for Respondent No. 1
MR PARESH UPADHYAY for Respondent No. 2, 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 04/08/2000

ORAL JUDGEMENT

The petitioner challenges the orders dated 12th October, 1989, 17th January, 1990 and 6th February, 1990, annexed to the petition at Annexures "D", "E" and "F" to the petition, by which he was not allowed to be relieved

for joining as Stenographer Grade-I at Bharuch and the order of his appointment was withdrawn. He has sought a direction that the High Court and the District Judge, Bharuch should relieve him for resuming his duties as Stenographer Grade-I at Bharuch and the District Judge, Bharuch should allow him to resume his duties as such. At the relevant time, the petitioner was serving as English Stenographer Grade-II in the Court of the Civil Judge (Senior Division) Bhuj, Katchh under the District Judge Bhuj. The District Judge, Bharuch had invited applications for the post of English Stenographer Grade-I, in response to which the petitioner had sent his application through the District Judge, Bhuj because under Rule 12(2) of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967, such applications were required to be forwarded through the appointing authority. That application was forwarded and the petitioner came to be selected for that post by order dated 17th August, 1989, which is at Annexure "A" to the petition. There is no dispute about the fact that Stenographer Grade-I post for which the petitioner had applied, was totally a different cadre in District Bharuch. Each district has its own separate establishment and the post of Stenographers are sanctioned for the respective districts. Admittedly there is no inter-transferability of these posts from one District to another, nor any promotional avenue provided from one district to another. Therefore, the petitioner had applied for a post which was outside the cadre in which he was serving and on a different establishment from the establishment in which he was serving in the district of Bhuj.

2. By the order of appointment dated 17th August, 1989, the petitioner was directed to resume his new assignment on 1.9.1989 positively, failing which necessary orders were to be passed. Copy of the order was forwarded to the District Judge, Bhuj, so that the petitioner could be relieved for joining the new assignment. The petitioner, on 14.9.1989 applied to the District Judge, Bhuj for relieving him on that day itself to enable him to resume his new assignment on the next day. It appears that before that letter was written by the petitioner to the District Judge, Bhuj, he had written a letter dated 28th August, 1989, which is now shown to the Court by the learned Counsel on behalf of the petitioner, by which the District Judge Bharuch was requested to extend 15 days time for resumption of his new assignment. He had stated that he was trying to see that his lien is maintained in the parent Department. In fact the petitioner was seeking to join the new

assignment in a different cadre and was not being sent on deputation. The District Judge, Bharuch by his letter dated 27th September, 1989 informed the petitioner that his request for extension of 15 days time for resumption of the new assignment was granted and he was directed to take over the new assignment positively on 16.10.1989 without fail. This is why on 14.9.1989 the petitioner requested the District Judge, Bhuj to relieve him on that day itself. The District Judge, Bhuj enquired of the petitioner through the Civil Judge (Senior Division) Bhuj, where he was working, to show under which provision was he entitled to be relieved on that day itself. Thereafter, an order was made on 12.10.1989, which is at Annexure "D" to the petition, by which the District Judge, Bhuj rejected the application of the petitioner for being relieved from his post. The ground for such rejection was that in one Departmental enquiry No.1 of 1988 held against the petitioner, he was punished by placing him at a minimum stage of the pay-scale for a period of five years without future effect. Furthermore, one departmental enquiry was likely to be held against him and this fact was also brought to the notice of the learned District Judge, Bharuch by the office letter dated 16.9.1989. Since the petitioner could not be relieved in view of the Departmental enquiry which was to be held against him and since there was no specific provision entitling the petitioner to be relieved, the learned District Judge held that it was not possible to relieve the petitioner. It appears that a representation was made by the petitioner on 24.10.1989 to the High Court on this aspect and the High Court, by the impugned order dated 6.2.1990 at Annexure "E" to the petition, directed that the petitioner may be continued at Bhuj and the District Judge, Bharuch may appoint another incumbent so that his work may not suffer. In the meantime on 17th January, 1990, the District Judge, Bharuch by the impugned order at Annexure "F" had withdrawn the order of appointment of the petitioner as English Stenographer Grade-I.

3. It was contended on behalf of the petitioner that once the application of the petitioner was forwarded by the appointing authority, who was District Judge, Bhuj, and thereby permission to apply was given to the petitioner, the appointing authority could not have refused the application of the petitioner for being relieved after he was appointed as English Stenographer Grade-I by the District Judge, Bharuch. It was submitted that on the principle of estoppel, the appointing authority could not have refused to relieve the petitioner. It was also submitted that the petitioner

was already punished in one Departmental enquiry and the other enquiry was not even commenced at the relevant time and therefore, there was no reason to reject the application of the petitioner for being relieved. The learned Counsel argued that the appointing authority had no power to reject such application for being relieved and that the provisions of Rule 33A(2) which applied to resignation could not be invoked even by an analogy. It was also contended that the petitioner remained in the same judicial department and therefore in reality it was only a transfer from one district to another and that the petitioner would have been entitled to all the post retiral benefits by counting his services prior to his joining in the post of Stenographer Grade-I for the purposes of pension etc. It was also submitted that the District Judge, Bharuch was willing to take the petitioner on his establishment despite it being pointed out that the petitioner was punished in one departmental enquiry and that one more was impending against him. It is submitted that the second enquiry which was contemplated was only in respect of some words which the petitioner is said to have uttered to the presiding officer to the effect that he was being tortured.

4. The learned Counsel appearing for the respondents argued that in view of the impending Departmental enquiry the concerned authority was justified in refusing the relief of the petitioner for joining his new assignment. It was submitted that it was open to the petitioner to resign but in that event also, in view of the provisions of Rule 33A(2) of the Bombay Civil Services Rules, even his resignation could have been with-held under the proviso (c), which empowers the Government to with-hold resignation where any such Departmental enquiry or criminal prosecution is contemplated or pending against the delinquent. Under sub-rule (3) of Rule 33-A it is provided that a Government servant shall not be relieved from his office, if his resignation is rejected. The learned Counsel argued that the impugned order made by the appointing authority was a reasoned order and cannot be assailed as arbitrary.

5. As pointed out hereinabove, the cadre of Stenographer Grade-I in the District of Bharuch for which the appointing authority was the District Judge, Bharuch, was totally a different cadre from the cadre in which the petitioner was serving under the District Judge, Bhuj as Stenographer Grade-II assigned to the Court of Civil Judge (Senior Division) Bhuj in Dist. Katchh. The petitioner's application undoubtedly was forwarded in consonance with the provisions of Rule 12(2) of the

Gujarat Civil Services Classification and Recruitment (General) Rule, 1967. The appointing authority under that rule was authorised to with-hold such application. However, since it was forwarded, it was sought to be argued that the appointing authority has estopped from now contending that there were grounds for not relieving the petitioner. This contention is wholly misconceived. Eventhough the appointing authority was authorised to with-hold the application and it was forwarded, that would not preclude the authority from later on contending that there were grounds for not relieving the petitioner. This is because at the time when the application was forwarded, the question of relieving the petitioner does not arise and such contingency would arise only after selection of a person and therefore, the appointing authority was not expected to take any advance decision at the stage when the applicant was simply seeking to forward his application. The contention that the authority was estopped from holding that there were grounds for rejecting the application of the petitioner of being relieved to join the new post, cannot therefore, be accepted.

6. The petitioner could not have just walked away from his post. If he wanted to get away from the post, the only way for him was to resign which he did not intend to do. An employment could be put an end to in the ways prescribed. The petitioner to whom the service conditions apply could not have unilaterally insisted that he should be relieved, though of course, he was free to resign and go away. However, even if he had resigned, as noted above, his resignation could have been with-held by the concerned authority, in view of the impending departmental enquiry. When the petitioner's resignation could have been rejected and under sub-rule (3) of Rule 33-A he could not have been relieved from his office on the ground that a departmental enquiry was contemplated against him, the petitioner had absolutely no right to be relieved simply for the reason that he had to take up a new assignment without putting up his resignation. When the ground of impending enquiry is good enough for not accepting a resignation, it was a sound exercise of power and discretion not to allow him to be relieved simply for joining a new assignment when departmental enquiry was impending. The impugned order at Annexure "D" dated 12th October, 1989 cannot therefore said to be arbitrary or illegal and it did not infringe any legal right of the petitioner especially when the petitioner did not intend to resign. The order made by the High Court at Annexure "E" requiring the District Judge, Bharuch to appoint another person and rejecting

the representation of the petitioner by directing him to be continued at Bhuj, was eminently justified in the facts and circumstances of the case and can by no means be said to be arbitrary or contrary to law. The impugned order dated 17.1.1990 at Annexure "F" made by the learned District Judge, Bharuch withdrawing the appointment order was a necessary corollary to that situation and cannot be faulted with.

In this view of the matter, there is absolutely no warrant for interfering with the impugned orders and the petition is wholly misconceived and is rejected. Rule is discharged with no order as to costs. Interim relief stands vacated forthwith.

*/Mohandas